IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 29 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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O.N.G.C. - Appellant(s)
Versus
SEVENTILAL SHIVLAL SHAH - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
M/S RJ RAWAL ASSOC. for Defendant(s) : 1,
MR RITESH K SONI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/09/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and decree of the learned Judge, City Civil Court(No.21), Ahmedabad passed in Civil Misc. Application No.536 of 1990 whereby the learned Judge allowed the said application.

2.0 The brief facts of the case are that the present appellant and the present opponent entered into an agreement dated 02.03.1967 for transporting crude oil from Navagam G.G.S. No.1 to Koyali refinery. There was a clause of arbitration in the said agreement. Thereafter,

some disputes arose between the appellant and the respondent which was referred to arbitrator Mr. N.N. Khurana(General Manager of Heavy Water Project Baroda). Mr. Khurana, as a sole arbitrator, as per the clause of arbitration mentioned in the agreement dated 02.03.1967, after hearing both the parties, declared his award on 16.09.1987. The arbitrator, thereafter, send copes of the said award to the appellant as well as opponent. It may be noted that even after the receipt of the copy of the said award no objections were filed by the appellant, and hence, the said award became final. Since the appellant failed to comply with the award of the arbitrator, the opponent approached the Civil Court under Section 17 of the Arbitration Act, praying to pass decree (Rule of Court) in his favour as per the award dated 16.09.1987. In the said application, after hearing the parties, the learned Judge passed the judgment and decree which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has raised a contention that Civil Court ought to have rejected the application of the opponent for passing the decree in his favour, in view of the fact that the award was passed on 16.09.1987 and the said application was filed in the year 1990 i.e. the same was barred by Clause (a) of Article 119 of the Limitation Act, 1963. In support of his contention learned Advocate for the appellant has placed reliance on a decision of the Apex Court in the case of ***"Bhagwati Oxygen Ltd. Vs. Hidnustan Copper Ltd."*** reported in (2005)6 SCC 462.

4.0 On the contrary, learned Advocate for the opponent has supported the order of the Civil Court and has placed reliance on two decisions of the Apex Court in the case of ***"CH. Ramalinga Reddy Vs. Superintending Engineer and Another"*** reported in (1999) 9 SCC 610 and ***"Gurbax Singh Vs. Punjab Mandi Board"*** reported in (2005) 10 SCC 575.

5.0 Heard, learned Counsel for the parties. The issue involved in this appeal is as to whether the Civil Court was justified in entertaining application preferred by the opponent under Section 17 of the Arbitration Act or not? It is an admitted position that the Arbitrator declared his award on 16.09.1987 and the same was served upon the appellant as well as opponent on or about 16.09.1987.

5.1 The main contention raised by the appellant is that if the opponent was interested in getting a decree in terms of the award, then he ought to have filed an application as required under Section 14(2) of the said Act i.e. the opponent ought to have filed such an application within 30 days from 16.09.1987. However, the same has not been done. It may be noted that in the instant case, the opponent has never prayed for calling of the award from the Arbitrator. In fact, the opponent has simply produced a copy of

the award passed by the Arbitrator which was served on him on 16.09.1987 and the Court has suo motu directed the Arbitrator to file the award in the Court. Had the opponent prayed that the award may be called for from the Arbitrator and decree may be passed in terms of that award, then in that case, the limitation of 30 days would have come in the way of the opponent. But, since the Court has suo motu directed the Arbitrator to file the award in the Court, no limitation as provided under Section 119 of the Limitation Act would arise.

5.2 As regards the contention with respect to non issuance of notice under Section 14(2) and objections as per Section 30 is concerned, it is required to be noted that pursuant to the filing of the award in the Court, the Court had issued notice to the appellant, which was served on the appellant on 05.09.1990. Even, after the receipt of the said notice no objections were filed by the appellant as required under Section 14(2) of

the said Act. Hence, the said contention deserves to be rejected. In above view of the matter, the decision of the apex Court in the case of ***"Bhagwati Oxygen Ltd. Vs. Hidnustan Copper Ltd."*** relied upon by the learned Advocate for the appellant shall not apply in the case on hand.

5.3 From the above discussion it could be concluded that the opponent's application under Section 17 of the Act was maintainable. It may be noted that even after the filing of the award by the Arbitrator on the suo motu direction of the Civil Court, no application under Section 14(2) or no objections as required under Section 30 was raised by the appellant which goes to show that the Civil Court was completely justified in allowing the application of the opponent. I am, therefore, in complete agreement with the reasoning adopted and findings arrived at by the Civil Court and in view of the decision of the Apex Court in the case of ***"CH. Ramalinga***

Reddy"(Supra) and ***"Gurbax Singh"***(Supra)find no reason to interfere in this appeal .

6.0 In the result the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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